

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs February 20, 2007

**PERRY RICKY RAY v. RICKY J. BELL, WARDEN**

**Direct Appeal from the Criminal Court for Davidson County  
No. 3803     Monte Watkins, Judge**

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**No. M2006-02389-CCA-R3-HC - Filed May 23, 2007**

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Petitioner, Perry Ricky Ray, appeals the trial court's summary dismissal of his petition for habeas corpus relief from his conviction for first degree murder. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID H. WELLES and ALAN E. GLENN, JJ., joined.

Perry Ricky Ray, Pro Se

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; Victor S. (Torry) Johnson III, District Attorney General; and Roger Moore, Assistant District Attorney General, for the appellee, the State of Tennessee.

**OPINION**

**I. Factual Background**

The record reflects that on August 29, 1991, pursuant to a jury trial, Petitioner was convicted of first degree murder and sentenced to a term of life in prison. This Court affirmed that conviction on April 15, 1993. *See State v. Ray*, 880 S.W.2d 700 (Tenn. Crim. App. 1993). On September 27, 2006, Petitioner filed a writ of habeas corpus in the Davidson County Criminal Court. The trial court summarily dismissed the petition finding that Petitioner failed to establish either that his sentence was void or that his term of imprisonment had expired. The trial court also found that Petitioner's claims were more appropriate in a petition for post-conviction relief than a habeas corpus petition.

On appeal, Petitioner argues that the trial court erred in denying habeas corpus relief. In support of his argument that he is entitled to habeas corpus relief, Petitioner cites several errors which allegedly occurred during the course of his trial proceedings. Specifically, Petitioner contends

that his statutory rights to a sentencing hearing and presentence investigation were violated; his statutory right to an instruction on lesser included offenses was violated; the doctor who testified regarding the victim's cause of death was not credible; his due process rights were violated as a result of prosecutorial misconduct; and he received ineffective assistance of counsel.

## II. Analysis

In Tennessee, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint.” *Church v. State*, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998); *see also* T.C.A. § 29-21-101 *et seq.* However, the grounds upon which a writ of habeas corpus may be issued are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record of the proceedings upon which the judgment was rendered that a court was without jurisdiction to convict or sentence the petitioner or that the petitioner is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. *Archer*, 851 S.W.2d at 163. A void judgment is a facially invalid judgment, clearly showing that a court did not have statutory authority to render such judgment; whereas, a voidable judgment is facially valid, requiring proof beyond the face of the judgment to establish its invalidity. *See Taylor*, 995 S.W.2d at 83. The burden is on the petitioner to establish, by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). Moreover, it is permissible for a court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petitioner does not state a cognizable claim. *See Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

We agree with the trial court and conclude that Petitioner has not established a cognizable claim for habeas corpus relief. Petitioner does not allege that the judgments convicting him are facially void or that his sentence has expired. To the contrary, each of Petitioner's claims, if proven true, would render his convictions voidable since determination of the issues goes beyond the face of the judgment. As noted by the trial court, some of the matters raised are proper for a petition for post-conviction relief. Where proper, a trial court may convert a petition for habeas corpus relief to one for post-conviction relief. T.C.A. § 40-30-205(c). However, Petitioner failed to follow the procedural requirements for filing a petition for post-conviction relief. *See* T.C.A. §§ 40-30-102, -204. Tennessee Code Annotated section 40-30-204 provides that a petition for post-conviction relief shall be filed in the county of the petitioner's conviction. Petitioner was convicted in Marshall County but filed his petition for relief in Davidson County. Furthermore, even had the trial court attempted to convert the petition for habeas corpus relief to one for post-conviction relief, as authorized by statute, the claim would have been dismissed as time barred. *See* T.C.A. § 40-30-102; *Archer v. State*, 851 S.W.2d at 164. Accordingly, the trial court properly dismissed the petition. Petitioner is not entitled to habeas corpus relief.

## **CONCLUSION**

For the foregoing reasons, the judgment of the trial court is affirmed.

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THOMAS T. WOODALL, JUDGE